
REPORT
OF THE
ATTORNEY-GENERAL
OF THE
STATE OF FLORIDA.



Report of the Attorney-General.

ATTORNEY-GENERAL'S OFFICE,
TALLAHASSEE, FLA., March 20, 1893. }

To His Excellency HENRY L. MITCHELL, Governor of Florida:

I herewith submit my report as to matters occurring in this office for the past two years:

STATE PHOSPHATE LITIGATION.

In my report of date March 18, 1891, made to Governor Francis P. Fleming, I had the honor to submit referring then to this matter, as follows:

"Suits were brought in November last against the Black River Phosphate Company mining, etc., in Clay county, in the waters of Black river, and against the Peace River Phosphate Company, the Arcadia Phosphate Company, the DeSoto Mining Company, and the Peruvian Phosphate Company. The last company mining, etc., in the waters of the Alafia river, in Hillsborough county, and the other three companies mining in the waters of the Peace river in DeSoto county. In these suits involving new and highly important questions to the State, I was assisted by Messrs. A. W. Cockrell & Son, of Jacksonville, who were specially employed by your excellency for that purpose. In the case of the Black River Phosphate Company, Judge W. B. Young, of the Fourth Judicial Circuit, sustained the demurrer interposed by the defendant company to the bill filed in behalf of the State. An appeal was taken to the Supreme Court, and on the 28th day of February, 1891, the case was argued in the Supreme Court by me and Col. A. W. Cockrell, for the State of Florida, appellant, and Col. H. Bisbee and Hon. C. M. Cooper, for the phosphate company, appellee. Apart from the question of the sufficiency of the allegations of the bill, raised by the demurrer, the further and more important question was dis-

cussed at length as to the effect of what is commonly known as the riparian act of 1856, being Chapter 791 of the Laws of Florida; and the further question of the title of the State of Florida to the beds and soils of navigable waters within her jurisdiction, whether tidal or non-tidal in their character.

"The case is pending in the Supreme Court for decision."

The Supreme Court affirmed the judgment of the court below, and the State's counsel then amended their bill in accordance with the views expressed by said court.

Since that time the testimony in that case has been taken at length, and the whole matter was heard before Judge W. B. Young, of the Fourth Judicial Circuit. Within the past thirty days Judge Young rendered his opinion in said case, and entered a decree dismissing the bill filed in behalf of the State to compel the Black River Phosphate Company to account for and pay over to the State of Florida the value of the phosphates and phosphatic rock and deposit, mined by it from the bed of Black River.

This decree has been appealed from by the State, and the case will soon be heard in the Supreme Court, and the right of the State to the phosphates and phosphatic rock and deposits in the beds of navigable streams will be defined by that tribunal.

The other companies against which suits have been commenced are as follows:

The Dunnellon Phosphate Company

The Peace River Phosphate Company, at Arcadia, Fla.

The Arcadia Phosphate Company, at Arcadia, Fla.

The Geo. W. Scott Manufacturing Company, at Zolfo, Fla.

The Charlotte Harbor Phosphate Company, at Hull, Fla.

~~The Jacksonville Peace River Phosphate Company, principal office at Jacksonville, Fla. Hy Robinson, President.~~

The National Peace River Phosphate Company.

The United States Phosphate Company.

The Bowling Green Phosphate Company.

The Homeland Pebble Phosphate Company.

The LaRue Phosphate Company.

The above have never conceded the State's right to royalty,

and have not applied for contracts, except the "Homeland Pebble Phosphate Company," and this latter has not complied with the law in reference to executing contracts.

The Alafia River Phosphate Company, under its first management, applied for contract, was awarded the territory asked for, and until the death of its first president, P. McQuaid, complied faithfully with its implied contract; but subsequently, under the new management, it claimed the analysis of its output entitled the State to only 50 cents per ton royalty, which it paid to include the quarter ending March 31, 1892, and has, since making such report and remittance, May 29, 1892, and upon demand by the Commissioners of 75 cents per ton royalty for whole output, refused to make further reports or remittances. Mr. S. M. Sparkman was instructed December 6, 1892, to bring suit against the company for non-compliance with contract, etc.

Litigation in the above cases is still pending in the Circuit Courts.

RAILROAD TAXES.

Under Chapter 4073, Laws of Florida, the Comptroller levied on, in 1892, the Florida Central & Peninsular Railroad, being the successor of certain other lines of railroads, for the taxes due on those other lines of roads, and assessed for the years 1879, 1880, and 1881. Whether these taxes can be collected, and whether the road is liable for them, can only be determined as the result of litigation, which is now in progress, the said company having filed its bill to enjoin the collection of the same.

PROPOSED LITIGATION AGAINST CERTAIN RAILROADS AND CANAL COMPANIES.

I desire to call the attention of the Legislature particularly to a resolution of the Legislature of 1891.

This resolution is as follows :

RESOLUTIONS.

[No 1]

SENATE JOINT RESOLUTION Directing and Empowering the Attorney-General to Institute Legal Proceedings to Compel Settlement of Indebtedness to the State by different Railroad and Canal Companies.

WHEREAS, The accompanying report of special committee appointed

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by the Senate of 1889, under Senate Resolution No. 9, providing for the appointment of a committee of three to examine and report what quantity of land has been already conveyed to the several railroad and canal companies of this State, under grants made previous to the payment by the Trustees of the Internal Improvement Fund of the debt creating a lien upon said lands, and how much more is still claimed by said corporations :

AND WHEREAS The accompanying report which was adopted by the Senate of 1889, shows that the several railroad and canal companies are indebted to the State in the sum of \$1,506,936.51;

AND WHEREAS, The committee recommend that the Attorney-General take the accompanying report under advisement, and be empowered to institute legal proceedings to compel a settlement of the same, therefore,

Be it resolved by the Legislature of the State of Florida:

That the Attorney-General be, and is hereby directed, authorized and empowered, to take the accompanying report under advisement, and institute legal proceedings in the premises to compel a settlement by such railroad and canal companies, and that the Attorney-General be authorized and empowered to employ associate counsel to assist in the conduct of such suit.

Approved June 2, 1891.

The committee report to which this resolution refers can be found in the Senate Journal of 1889. I have not begun this litigation yet, but have gone to considerable investigation and preparation to commence same if this legislature does not otherwise direct.

The Trustees of the Internal Improvement Fund have appropriated \$500 to be paid to Judge E. J. Vann, of Madison, Fla., to assist me in this proposed litigation. But before commencing same I have felt that the matter was too important to initiate without a fuller consideration of it by this Legislature than I am satisfied the Legislature of 1891 gave to it.

The resolution above referred to is in error when it speaks of the several railroads and canal companies being "indebted to the State." If the idea underlying this resolution and the report it refers to is correct, and any lands or their value were recovered, not a dollar nor an acre would go to the State of Florida proper. Whatever was recovered, if any, would belong to the Internal Improvement Fund, and would be held subject to the trusts connected with this fund, viz., for the

benefit of railroad and canal and drainage companies, that are already or may hereafter be chartered.

The whole question involved in the Senate joint resolution is, whether the Internal Improvement Fund, *not the State of Florida*, has a right to recoup from certain land grant and canal companies a certain amount in money or lands, because a portion of the Internal Improvement Fund was used to pay off an indebtedness which, at the time, was a lien on all the lands of the Internal Improvement Fund, and which lien covered the several grants alluded to.

This question of law should be considered by a select committee of lawyers in the coming Legislature, and a thorough consideration be given to it, and a report be made embodying their views. Many able lawyers find no tenableness in law, in their opinion, for the view taken of this matter in the above quoted resolution.

The matter deserves, for obvious reasons, a clear and comprehensive report from the best legal talent in the Legislature.

The benefit, if any, from the proposed litigation, will inure to the Internal Improvement Fund, and would go to railroads, drainage and canal companies. The State, as such, has no direct monetary interest in this litigation.

This litigation, if determined upon, should not be imposed on the Attorney General, as the State business proper is quite enough to fully engage his time. Besides, I am, *ex officio*, a trustee of the Internal Improvement Fund.

In one capacity I must hear and decide on the rights and interests of these land grant companies, and in the other capacity proceed adversely, in litigation, to them.

The right of the matter is to engage outside counsel, if the Legislature desires, after full investigation, to begin this litigation, and thus make the Internal Improvement Fund and the railroads and canal companies, benefited by it, bear the whole labor and expense.

I recommend this course to the Legislature, not that I desire to shirk either labor or responsibility, but because I think it the just and proper course to pursue.

I will, by advice, put the counsel so employed in possession

of such knowledge as I have already acquired by my investigations.

RAILROAD COMMISSION CASES.

The Legislature of 1891 having repealed the railroad commission law and made no saving clause in favor of existing suits, it became necessary for me to dismiss all cases then pending against railroads in the State. In one case in Jackson county, being a suit for a penalty for violating the commission rates, a verdict for \$1,000 was recovered against the Pensacola and Atlantic Railroad Company. The case stands on appeal by the railroad company.

EXECUTIVE SUSPENSIONS.

On the 29th day of October, A. D. 1892, Governor Fleming suspended J. E. Johnson, tax collector of Duval county, from office for "neglect of duty in office."

Governor Fleming then appointed, and on the 26th day of November, 1892, a commission issued to E. W. Gillen to be tax collector of Duval county.

Johnson refused to deliver the office and books, etc., to Gillen. By request of Governor Fleming I brought mandamus proceedings in the Supreme Court against Johnson to compel him to turn over to Gillen. This he did in obedience to a peremptory writ of mandamus.

The above removal grew out of the alleged refusal of Johnson, as tax collector, to accept poll taxes from one person for another person, and closing his office at noon.

It seems to me advisable to provide by law that no person shall pay the poll taxes of another person unless first by that other person authorized to do so.

The law as it stands will lead to much confusion and it is easy to see how it will be perverted by partisans in politics outside of this State. It would be well to fix by law the days the tax collector shall remain at his office in years of general elections for receiving poll taxes and prescribe his office hours for such days.

THE DUVAL COUNTY ELECTION CASE.

Application was made to me by several lawyers, and quite a number of citizens of Duval county, that I bring *quo war-*

ranto proceedings, against the county officers elected in Duval county, at the October election in 1892, to oust them from office.

I declined to do so.

No one claimed these offices adversely to the persons who hold commissions as county officers in that county.

The suits, had they failed, would have been at the expense and on the responsibility of the State.

Had there been adverse claimants, and I had refused to bring *quo warranto* in their behalf, then they themselves could have proceeded in the matter.

As the law stands, when no one claims adversely, and the Attorney-General refuses to proceed, then no one else can do so.

This of course is a very great power residing in the Attorney-General, and he, as any other officer in the discharge of his duties, is liable to err. But in this case my duty seemed very plain to me, both on the law and the facts.

The rule above stated is the common law rule in force in this State. The Legislature can change it if it sees fit.

The opinion I rendered in that case is too long for publication here, but any member can readily have access to it at this office.

SUGGESTED LEGISLATION.

Judge Broome of the Seventh Judicial Circuit, suggests the following omissions in the law and changes otherwise desirable.

First—That there is no present provision in our statutes for perfecting service on non-resident minors.

Second—The omission in the Revised Statutes making the use of the scrawl effectual as a seal.

Third—The re-enactment of the old law making real estate assets in the hands of administrators.

Fourth—Requiring the party calling for a jury in vacation to deposit a sum of money with the court to pay the jury and cost of summoning same.

I recommend that a law be passed inhibiting, under a

heavy penalty, the employment of what are known as "Pinkerton men" in this State.

This is scarcely a practical question in this State, but such a law will serve to emphasize the objection to the employment of a force of men aptly characterized by Senator Turpie, of Indiana, as the "Janizaries of protection."

There is great complaint in the State against the "ballot-box" feature of our election law.

This feature of our election laws may be changed with advantage, and the enacting instead a modified form of the Australian ballot law.

This would effectually protect the State against illiterate and dangerous suffrage, and be much more acceptable to the intelligence of our people.

I respectfully request that the Legislature make an appropriation for the payment of a clerk for this office. Every other administrative officer has one or more needed clerks, and this office should not be refused one.

The correspondence is large and much of my time is consumed in this way. The State's litigation increases every year and county officers and private citizens impose much labor on this office in questions upon the laws. It is not strictly my duty to answer them, but I scarcely feel warranted in declining to do so.

If the people are inconvenienced by this, they are, I know, willing to pay for clerical help.

All of which is respectfully submitted.

W. B. LAMAR,
Attorney-General.